

REMARKS

In response to the Office Action dated February 12, 2007, Applicants have amended claims 29 and 37 to further define the present invention, according to those claims.

Reconsideration of claims 29-42, based on the above amendments is respectfully requested.

In response to the Restriction Requirement contained in the Office Action, Applicants hereby elect Group I, claims 1-8 and 15-22, with traverse. Applicants expressly reserve the right to file a divisional application for the non-elected claims. Applicants note that the Restriction Requirement was presented in a multi-part format, and Applicants respectfully traverse each portion, as discussed below.

The Restriction Requirement alleged that the present application can be separated into three separate inventions, namely Invention I: claims 1-8 & 15-22, Invention II: claims 9-14 & 23-28 and Invention III: claims 29-42.

Inventions II and I are asserted to be related as combination and subcombination. The Restriction Requirement alleges that (1) the combination does not require the particulars of the subcombination because it does not require a frequency of 500 Hz – 20 kHz and (2) that the subcombination has separate utility such as stimulating to treat pain without the use of a digital signal processor, but using hardwired circuitry. That portion is respectfully traversed.

Applicants respectfully contend that the combination as categorized in the Restriction Requirement does require a frequency of 500 Hz – 20 kHz. Claim 10 recites "...waveform includes a base medium frequency of at least 500Hz but not more than 20KHz." Applicants respectfully assert that that portion of the Restriction Requirement is improper.

In addition, the Restriction Requirement alleges that the subcombination has separate utility such as stimulating to treat pain without the use of a digital signal processor, but using hardwired circuitry. However, claim 12, which, according to the Restriction Requirement, is asserted to fall within the combination, similarly treats pain without the use of a digital signal

processor. Applicants respectfully assert that this portion of the Restriction Requirement is improper. Moreover, given these inconsistencies, Applicants cannot properly elect the combination or subcombination, since the alleged invention categories are not accurate.

The second portion of the Restriction Requirement alleges that Inventions III and I & II are related as process and apparatus for its practice. The Restriction Requirement asserts that the apparatus can be used to practice another and materially different process “such as stimulation of the brain and not requiring placing electrodes at diagonally paired corners, but adjacent to each other.” However, such stimulation of the brain would not require “implantable electrodes” as recited in the apparatus claims. Additionally, both sets of claims recite the positioning of implantable electrodes at predetermined locations. For at least that reason, Applicants respectfully assert that this portion of the Restriction Requirement is improper.

Additionally, the Restriction Requirement alleges that “there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification.” However, an examination of the prosecution history of the present application indicates that Class 607, subclasses 46 and 67, have already been searched. It is not clear how there can be any support for this finding of a burden on the Examiner, since the separate classifications have already been searched. For at least this reason, Applicants respectfully assert that that portion of the Restriction Requirement is improper.

This application should now be in order for consideration on the merits of the claims in the elected group as Applicants have fully and completely responded to the Office Action by making the required election. Reconsideration and withdrawal of the Restriction Requirement are respectfully requested.

In the event there are any questions relating to this Response or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP,
Deposit Account No. 23-2185 (000309-00053). Any fees due are authorized above.

Respectfully submitted,



Michael C. Greenbaum
Registration No. 28,419

BLANK ROME LLP
600 New Hampshire Avenue
Washington, D.C. 20037
(202) 772-5800

Date: March 12, 2007